express authority of his co-partners to grant a bill of sale, I can see no reason for drawing any distinction between a firm and a company. It has been held in *Furnivall* v. *Hudson* [2] that nothing in the English Bills of Sale Acts prohibited the execution of a bill of sale by an attorney under a power. No such prohibition either can be found in our Ordinance to debar an agent from executing a bill of sale.

Neither in *Saunders* v. *White*, nor in any other English case that I know of, has it ever been suggested that a bill of sale can be given by only one grantor. With respect, I do not agree with the contrary view of Thornton J. in *Arnashellum* v. *Tengachee Nachiar* [3] which was cited by learned counsel. Words in the singular include the plural (see section 2(95) of the Interpretation and General Clauses Ordinance, 1948).

To conclude, I think it will not be out of place here to remind ourselves of the true object and intention of the Bills of Sale Ordinance. In *Charlesworth* v. *Mills* [4] Lord Halsbury L.C. observed that the Bills of Sale Acts 1854 and 1878 were intended to prevent false credit being given to people allowed to remain in possession of goods which apparently were theirs, the ownership of which they had surrendered. On the other hand the purpose of the amending Act of 1882 was essentially different. "It was thought by the Legislature, rightly or wrongly, that a great number of impecunious debtors might be induced to sign documents the legal effect of which those persons did not understand. It was therefore intended by the Legislature, in order to protect them, to give a particular form of words which should plainly express the nature of the contract as to the loan and the security for the loan. The Legislature accordingly, in order to effect the object, gave a form of bill of sale, and made every bill of sale void unless it was in accordance with the form given by the statute."

Both absolute bills of sale and those given by way of security are combined and dealt with in our single Ordinance. Hence the observations of Lord Halsbury are equally applicable thereto. Any objection to the validity of any bill of sale must, in my view, be considered in the light of the true facts of each particular case. The test is this: Does it come within the purview of the mischief which the law intended to remedy? There could be no possible doubt or ambiguity on any point whatsoever regarding the transaction in question in this appeal. The attestation clause clearly shows in what capacity Ng Teng Tuan had executed the bill of sale. His authority had never been repudiated by his partner.

I would dismiss the appeal with costs.

**Thomson L.P.** concurred.

**MacIntyre J.:** I have had the advantage of reading the judgment of Ong Hock Thye F.J., and I am in complete agreement with it.

I have nothing to add.

*Appeal dismissed.*

Solicitors: *Lim Cheng Ean & Co.; N. Sharma.*

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## PUBLIC PROSECUTOR v. LEE SIEW NGOCK

**[A.Cr.J. (MacIntyre J.) January 5, 1966]**

**[Penang — Criminal Appeal No. 15 of 1965]**

*Criminal Law and Procedure — Trial — Autrefois acquit — Issue estoppel and res judicata — Governing principles — Income Tax Ordinance, 1947, s. 92.*

*Income Tax — Certificate of disclosure — Falsity of — Awareness.*

The accused had been charged with two offences of wilfully and with intent to evade tax giving a false answer in writing to a request for information by the senior investigation officer of the Income Tax Department, or alternatively of giving incorrect information without reasonable excuse. The first charge related to the giving of information on October 1, 1955, and the second to the giving of information on April 14, 1954. It was alleged that the accused had failed to disclose certain assets belonging to him in his statement. The accused was tried on the first charge and acquitted. When he was tried for the second charge he pleaded *autrefois acquit* and he was acquitted. The Public Prosecutor appealed.

**Held:** (1) as the alleged offences disclosed by the charges related to two independent criminal acts committed on two different dates, the plea of *autrefois acquit* was not available to the accused;

(2) as the accused had been acquitted of the first charge, this amounted to a finding that up to October 1, 1955, he was unaware that any item of assets had been omitted from the statement made by him and that issue must be regarded as determined and settled for all times by the acquittal of the accused;

(3) therefore the prosecution could not re-open the issue by attempting to prove that the accused was aware of the omission of the assets at an earlier period as it would be barred by the principles of issue estoppel as well as *res judicata*.

Application of the principles of issue estoppel to criminal proceedings discussed.

*Cases referred to:—*

(1) *Connelly* v. *Director of Public Prosecutions* [1964] A.C. 1254, 1305; [1964] 2 W.L.R. 1145; [1964] 2 All E.R. 401; 48 Cr.App.R. 183.

(2) *Sambasivan* v. *Public Prosecutor* [1950] M.L.J. 145.

(3) *Mraz* v. *The Queen* (1956), 96 C.L.R. 62, 70.

(4) *Brown* v. *Robinson* [1960] S.R. (N.S.W.) 297, 301.

(5) *Sealfon* v. *United States* (1948), 332 U.S. 575.

CRIMINAL APPEAL.

*Abdul Hamid bin Dato' Azmi* (Deputy Public Prosecutor) for the appellant.

*Lim Kean Siew* (*O. L. Phipps* with him) for the respondent.

*Cur. Adv. Vult.*

**MacIntyre J.:** This is an appeal by the Public Prosecutor against the acquittal of the respondent by the learned president of the sessions court at Penang in Summons Case No. 6 of 1964 on a charge of giving wilfully and with intent to evade tax, a false answer in writing to a request for information by the senior investigation officer of the Income Tax Department, an offence under section 92(1)(c) and punishable under section 92 of the Income Tax Ordinance 1947 *or* alternatively of giving incorrect information without reasonable excuse, an offence under section 91(1)(b) and punishable under section 91 of that Ordinance.

The ground of acquittal was that the respondent had been tried and acquitted of the same offence in Penang Summons Case No. 5 of 1964 and therefore the plea of *autrefois acquit* was available to him.

The facts in respect of the charges in the two prosecutions are as follows:

By a letter dated the 3rd of March 1954, Mr. R. C. Phillips, the senior investigation officer of the Income Tax Department wrote to the respondent requiring him to forward within a specified time a certified statement of his total assets and liabilities, including those of his wife for the period commencing on the 1st of January 1947 and ending on the 31st of December, 1953. He also enclosed with that letter the form of a certificate of disclosure to be completed and signed by him and returned together with the statement of assets and liabilities.

Acting on behalf of the respondent, a firm of accountants by the name of Messrs. Wong Loh Hun & Co. sent a letter dated the 14th day of April 1954 to the senior investigation officer enclosing a statement of assets and liabilities together with a certificate of disclosure bearing the same date and duly signed by the respondent.

The certificate of disclosure was in the following form:

"I hereby certify that I have made a complete disclosure to the Income Tax Department of Malaya of

(a) all banking accounts, whether current or deposit, business or private, in my own name or in the name or names of my wife or wives, or in any other name, in which I am or have been interested, or on which I have or have had power to operate, jointly or solely, and which are in existence or which have existed at any time during the period 1st January 1947 to 31st December 1953;

(b) all savings and loan accounts, deposits, building society and co-operative society accounts, in regard to which I have or have had any interest or power to operate jointly or solely during the period aforesaid;

(c) all assets, other than those referred to in paragraph (a) or (b) of this section which I and my wife or wives possess, or have possessed, during the period aforesaid;

(d) all sources of income not referred to in paragraph (a), (b) or (c) of this section and the income derived therefrom; and

(e) all facts bearing upon my liability to income tax to which I am or have been liable."

The above items in the certificate of disclosure are a reproduction of sub-sections (a) to (e) of section 61A of the Income Tax Ordinance which empowers the Comptroller of Income Tax to give notice of disclosure to a taxpayer in respect of the assets referred to therein.

The senior investigation officer then carried out investigations and discovered that the respondent had omitted to disclose in the aforesaid statement of assets and liabilities dated the 14th of April 1954 certain interests which he held in a goldsmith business and in another firm and also in some landing crafts. The omission was admitted by the respondent and thereafter there was apparently some dispute as to valuation of these assets. In view of the default on the part of the respondent to disclose these assets in his statement of assets and liabilities and in order to ensure that no other assets had been left out, the senior investigation officer addressed a letter dated the 24th of March 1955 to Wong Loh Hun & Co. as agents of the respondent, requesting them in paragraph 7 thereof as follows:

"I should like confirmation that there are no omissions from the statement of assets and liabilities. I appreciate your client has already signed a certificate of full disclosure, but I have received information which suggests that there may have been some omissions."

In September 1955 a compromise was reached regarding the tax payable was evidenced by a letter dated the 30th of September which reads as follows:

"The Senior Investigation Officer,
P.O. Box 1044,
Kuala Lumpur. 30th September 1955

Sir,

*Lee Siew Ngock — CG. 13196/300*

With reference to our conversation through the phone today, we confirm that you have agreed to accept our client's offer of $11,500 as full settlement for the assessment years from 1948 to 1953 both years inclusive.

Our client has also instructed us to request you to grant him permission to have his tax paid by five monthly instalments which he sincerely trusts that you will kindly grant him this request.

Regarding the certificate of disclosure, this will be forwarded to you in due course.

We have the honour to be,
Sir,
Your obedient servants,
Wong Loh Hun & Co."

This letter makes it clear that notwithstanding the compromise the senior investigation officer had insisted through the phone that another certificate of disclosure should be signed by the respondent certifying that he had now

disclosed all his assets. Accordingly, a certificate of disclosure in identically the same words as the certificate of disclosure dated the 14th of April 1954 was signed by the respondent on the 1st day of October 1955 and forwarded to the senior investigation officer.

Subsequently, the senior investigation officer discovered that the respondent had also failed to disclose in his statement of assets and liabilities dated the 14th of April 1954 five banking accounts — two in his name and three in the name of his wife. Thereupon the senior investigation officer took legal proceedings against the respondent as a result of which he was charged in Penang Summons Case Nos. 5 and 6 of 1964 as follows:

*"Sessions Court Summons Case No. 5 of 1964*

That you on the 1st day of October 1955 at Penang gave a false answer in writing to a request for information made in accordancce with the provisions of the Income Tax Ordinance 1947 and thereby committed an offence under section 92(1)(c) of the Income Tax Ordinance 1947 and punishable under section 92 of that Ordinance.

*PARTICULARS*

Omitting from a certificate of disclosure dated the 1st day of October 1955 made pursuant to sections 61 and 61A of the Income Tax Ordinance details of the following bank accounts whether current or deposit business or private or in the name of his wife:—

(a) A fixed deposit account of $10,000 with the Chartered Bank Penang made by Madam Wong Tong Chan the wife of Lee Siew Ngock.

(b) A current account No. 3883 with the Oversea Chinese Banking Corporation Limited Penang in the name of Madam Wong Tong Chan the wife of Lee Siew Ngock.

(c) A current account with the Chartered Bank Penang in the name of Madam Wong Tong Chan the wife of Lee Siew Ngock.

(d) A current account with the Hongkong and Shanghai Banking Corporation Penang in the name of Lee Siew Ngock himself.

(e) A current account with the Mercantile Bank Limited Penang in the name of Lee Siew Ngock himself.

*ALTERNATIVELY*

That you on the 1st day of October 1955 at Penang without reasonable excuse gave incorrect information in relation to a matter affecting your own liability to tax and thereby committed an offence under section 91(1)(b) of the Income Tax Ordinance 1947 and punishable under section 91 of that Ordinance.

*PARTICULARS*

The particulars relied upon in support of the first charge are relied upon in support of the alternative charge.

*"Sessions Court Summons Case No. 6 of 1964*

That you on the 14th day of April 1954, at Penang wilfully, with intent to evade tax, gave a false answer in writing to a request for information made in accordance with the provisions of the Income Tax Ordinance, 1947 and thereby committed an offence under section 92(1)(c) of the Income Tax Ordinance, 1947 and punishable under section 92 of that Ordinance.

*PARTICULARS*

Omitting from his statement of assets and liabilities the following bank accounts whether current or deposit business or private or in the name of his wife:

(a) A fixed deposit account with the Chartered Bank Penang made by Madam Wong Tong Chan wife of Lee Siew Ngock.

(b) A current account No. 3883 with the Oversea Chinese Banking Corporation Limited Penang in the name of Madam Wong Tong Chan the wife of Lee Siew Ngock.

(c) A current account with the Chartered Bank Penang in the name of Madam Wong Tong Chan the wife of Lee Siew Ngock.

(d) A current account with the Hongkong and Shanghai Banking Corporation Penang in the name of Lee Siew Ngock himself.

(e) A current account with the Mercantile Bank Limited Penang in the name of Lee Siew Ngock himself.

*ALTERNATIVELY*

That you on the 14th day of April 1954, at Penang without reasonable excuse gave incorrect information in relation to a matter affecting your own liability to tax and thereby committed an offence under section 91(1)(b) of the Income Tax Ordinance, 1947 and punishable under section 91 of that Ordinance.

*PARTICULARS*

The particulars relied upon in support of the first charge are relied upon in support of the alternative charge.

Sanction to prosecute attached."

To set the record right I must mention that the main charge in Summons Case No. 6 of 1964 (instant case) as reproduced in the petition of appeal is the charge as originally framed and not the amended charge on which the trial proceeded.

By virtue of the provisions of section 164(1) of the Criminal Procedure Code (S.S. Cap. 21), the two charges could not be tried together. Summons Case No. 5 of 1964 was therefore taken first resulting in the acquittal of the respondent on the 8th of May 1965.

The instant case was heard on the 21st of June 1965 and on a plea in bar of *autrefois acquit* the respondent was acquitted. The learned president held that the gist of the alleged offence in the main charge as well as the alternative charge was the omission to disclose the five bank accounts from the list of assets and liabilities dated the 14th day of April 1954. From this line of argument he came to the conclusion that even though the certificate of disclosure in the instant case was dated the 14th of April 1954 and the certificate of disclosure in Summons Case No. 5 of 1964 was dated the 1st of October 1955, they related to one and the same act of omission and therefore the respondent could not be charged and tried of the same offence twice.

The learned president had undoubtedly misdirected his mind as to what were the essential ingredients of the charge. This may be due to the fact that the charges had been badly drawn up. Neither the main charge nor the particulars given specify what was the exact information asked for and what was the precise answer given.

However it is apparent that the gist of the offence disclosed by the main charge is not the omission of the five bank accounts from the statement of assets and liabiilties but the falsity of the certificate of disclosure in that the respondent had certified that he had disclosed all his assets. Likewise in regard to the alternative charge the gist of the offence is not the omission to disclose the five bank accounts but the incorrectness of the certificate for the same reason. The omission to disclose the bank accounts in the statement of assets and liabilities is merely the evidence to prove the falsity or incorrectness of the certificate of disclosure. It must follow therefore that each act of making a false or incorrect certificate is a separate offence by itself.

In *Connelly* v. *Director of Public Prosecutions* [1] Lord Morris examined a number of authorities with a view of formulating the governing principle in regard to the plea of *autrefois acquit* and observed that both principle and authority establish:

"(1) that a man cannot be tried for a crime in respect of which he has previously been acquitted or convicted; (2) that a man cannot be tried for a crime in respect of which he could on some previous indictment have been convicted; (3) that the same rule applies if the crime in respect of which he is being charged is in effect the same, or is substantially the same, as either the principal or a different crime in respect of which he has been acquitted or could have been convicted or has been convicted; (4) that one test as to whether the rule applies is whether the evidence which is necessary to support the second indictment, or whether the facts which constitute the second offence, would have been sufficient to procure a legal conviction upon the first indictment either as to the offence charged or as to an offence of which, on the indictment, the accused could have been found guilty; (5) that this test must be subject to the proviso that the offence charged in the second indictment had in fact been committed at the time of the first charge; thus if there is an assault and a prosecution and conviction in respect of it there is no bar to a charge of murder if the assaulted person later dies; (6) that on a plea of *autrefois acquit* or *autrefois convict* a man is not restricted to a comparison between the later indictment and some previous indictment or to the records of the court, but that he may prove by evidence all such questions as to the identity of persons, dates and facts as are necessary to enable him to show that he is being charged with an offence which is either the same, or is substantially the same, as one in respect of which he has been acquitted or convicted or as one in respect of which he could have been convicted; (7) that what has to be considered is whether the crime or offence charged in the later indictment is the same or is in effect or is substantially the same as the crime charged (or in respect of which there could have been a conviction) in a former indictment and that it is immaterial that the facts under examination or the witnesses being called in the later proceedings are the same as those in some earlier proceedings; (8) that, apart from circumstances under which there may be a plea of *autrefois acquit*, a man may be able to show that a matter has been decided by a court competent to decide it, so that the principle of *res judicata* applies; (9) that, apart from cases where indictments are preferred and where pleas in bar may therefore be entered, the fundamental principle applies that a man is not to be prosecuted twice for the same crime."

Lord Morris then goes on to say: "These principles, which, in my view, should be accepted and followed, have been evolved over a long period."

Now, the alleged offences disclosed by the charges in Summons Case No. 5 and 6 of 1964 relate to two independent criminal acts committed on two different dates. All the English and the Malaysian cases which I have examined in which the plea of *autrefois acquit* or *autrefois convict* had been considered relate to trials for different offences committed in the course of a single transaction on a particular date and time. The basic principle underlying the doctrine of *autrefois acquit* or *convict* is that a man should not be tried or convicted twice of the same offence and not that a man cannot be tried or convicted of two similar offences committed on two different dates. The plea of *autrefois acquit* is therefore not available to the respondent in the instant case.

The English courts, it would seem, have been reluctant to extend the scope of the plea of *autrefois acquit* to the extent that it had developed in other countries whose laws are based on the same legal system. Lord Reid observed in *Connelly* v. *Director of Public Prosecutions*, *supra*, "that many generations of judges have seen nothing unfair in holding that the plea of *autrefois acquit* must be given a limited scope." When he said this, Lord Reid, no doubt, had in mind the extention of the doctrine in Australia and the United States to include what is known as the principle of issue estoppel.

Now in regard to the nine governing principles enunciated by Lord Morris, *supra*, the 8th appears to be strictly inapplicable to a plea of *autrefois acquit*. He himself draws the distinction by saying:

"Apart from the circumstances under which there may be a plea of *autrefois acquit* a man may be able to show that a matter had been decided by a court competent to decide it, so that the principle of *res judicata* applies."

In *Sambasivam* v. *Public Prosecutor* [2] the Judicial Committee to quote from the judgment of Lord Pearce in *Connelly* v. *Director of Public Prosecutions*, *supra*,

"affirmed the principle that *res judicata* applies to criminal as much as to civil proceedings and that the effect of an acquittal is not completely stated by saying that the accused person cannot be tried again for the same offence. Evidence cannot be called in a later case which would controvert the acquittal."

With regard to the decision in *Sambasivam's* case, *supra*, Lord Morris says:

"This is in tune with what has been laid down in a number of important judgments in Australia. Thus in *Mraz* v. *The Queen* [3] it was stated in the judgment of the High Court that the principle of issue estoppel is 'to treat an issue of fact or law as settled once for all between the parties if it is distinctly raised and if the judgment pronounced implies its determination necessarily as a matter of law.' So, too in *Brown* v. *Robinson* [4] it was said in reference to issue estoppel that it depends upon an issue or issues having been distinctly raised and

found in a former proceeding: 'Once this is done, then, so long as the finding stands if there be any subsequent litigation between the same parties no allegations legally inconsistent with the finding may be made by one of them against the other.' A similar approach is shown in the case of *Sealfon* v. *United States*." (5)

Now the acquittal of the respondent in Summons Case No. 5 of 1964 on a charge of making a false or incorrect statement on the 1st day of October 1955 to the effect that he had disclosed all his assets in his statement of assets and liabilities amounts to a finding that up to that date he was unaware that any item of assets had been omitted from the statement. That issue between the parties must therefore be regarded as determined and settled for all times by the acquittal of the respondent.

In the instant case, however, the prosecution is attempting to re-litigate that issue by trying to prove that before the 1st day of October 1955, to wit, on the 14th of April 1954 the respondent was aware of the omission of the five bank accounts from the same list of assets and liabilities which was put in evidence in Summons Case No. 5 of 1964. Awareness is an essential ingredient of the charge for if he was not aware of the omission the question of wilfully making a false certificate of disclosure will not arise. In my opinion, any attempt by the prosecution to re-open the issue would be barred by the principles of issue estoppel as well as *res judicata.*

The learned president in acquitting the respondent has in fact acted on the principle of issue estoppel. The principle of issue estoppel as far as I am aware has not been applied to criminal proceedings by the courts of England or of this country. But I see no reason, whatever, why that principle should not be applied to criminal trials in this country. In the first place, if that principle had not been applied by English courts, the reason is not because the principle is unsound but because of certain technical difficulties in applying it in the conditions prevalent in England. A large category of crimes are tried by jury in England who do not as a general rule decide on specific issues but merely return a verdict of guilty or not guilty. In this country, however, only a few crimes are triable by a jury but even if jury trials are not conducive to the application of the principle, I see no reason why the principle should not be applied in respect of those criminal proceedings where the issues are well defined and easily ascertainable. In the second place, despite the prevalence of jury trials, the principle has found acceptance in other countries where the English legal system prevails. And lastly, the High Court in the exercise of its inherent jurisdiction has the power to prevent any abuse of its process. To attempt to re-litigate an issue which had been litigated on and determined by a court of competent jurisdiction would in my opinion be an abuse of the process of the court.

I have had the advantage of reading the record of trial in Summons Case No. 5 of 1964. In that case the respondent gave evidence to show that through no fault of his own the firm of accountants who had prepared his statement of assets and liabilities had omitted to disclose the relevant bank accounts; and that when he signed it the contents had not been fully explained to him because of a sudden heart attack. Even if in the opinion of the prosecution that story is untrue, as long as the acquittal stands unreversed by an appeal court, the finding of a court of competent jurisdiction cannot be challenged in another trial. The finding of fact in Summons Case No. 5 of 1964 was to the effect that even as late as the 1st of October 1955 the respondent was not aware that the five bank accounts had been omitted from his statement of assets and liabilities.

The nature of the evidence required to prove the charge in the instant case must be to the effect that the respondent was aware of the omission in 1954. If that evidence is accepted then the acquittal in Summons Case No. 5 of 1964 would be proved to be wrong for if the respondent was aware of the omission in 1954 he must have been aware of it in 1955. I think that the difficulties of the prosecution stem from the fact that they had chosen to proceed with the disposal of the cases in the order of their serial numbers rather than in the chronological order of events The position now is that to prove the charge in the instant case the prosecution will have to call evidence which would controvert the acquittal in Summons Case No. 5 of 1964. This they are not entitled to do by virtue of the judgment in *Sambasivam's* case *supra* based on the doctrine of *res judicata.*

The appeal is therefore dismissed.

*Appeal dismissed.*

Solicitors: *Lim Kean Siew & Co.*

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## HASHIM & ANOR. v. PUBLIC PROSECUTOR

**[A.Cr.J. (Ong Hock Thye F.J.) January 5, 1966]**

**[K.L. — Selangor Criminal Appeal No. 63 of 1965]**

*Criminal Law and Procedure — Trial — Appeal — Grounds of judgment — Sufficiency of — Prevention of Corruption Act, 1961, s. 15(4).*

The appellants had been convicted of offences under the Prevention of Corruption Act, 1961. The president of the sessions court in his grounds of judgment merely stated that the story of the appellant had cast no doubt on the prosecution story and that he was convinced beyond doubt that there was a conspiracy between them to cheat the Federation Government.

**Held:** the grounds of decision were insufficient as the learned president had not stated his findings of fact and therefore the convictions must be quashed.